

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

NAIF AL SHIMARY,

Petitioner,

v.

Case No. 2:24-cv-11646

Honorable Jonathan J.C. Grey

United States District Judge

MARTY C. RAYBORN, District  
Director, BUREAU OF  
IMMIGRATION AND CUSTOMS  
ENFORCEMENT, Detroit  
Field Office, *et. al.*,

Respondents,

/

**OPINION AND ORDER GRANTING  
MOTION TO VACATE THE STAY (ECF No. 6)**

Naif Al Shimary, (“Petitioner”), confined at the St. Clair County Jail in Port Huron, Michigan, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, through counsel Iris E. Rubin, in which he challenges his continued detention by the Bureau of Immigration and Customs Enforcement (ICE). Magistrate Judge David R. Grand signed an order requiring a responsive pleading and staying Petitioner’s removal or deportation until further order by this Court. (ECF No. 3.) Respondent has filed an answer to the petition (ECF No. 5) and a motion

to vacate the stay of removal (ECF No. 6). For the reasons that follow, Respondent's motion is **GRANTED**.

## **I. Background**

Petitioner was born in Iraq on July 1, 1984 and left that country with his entire family in 1991 during the Gulf War. The family lived in a United Nations refugee camp in Saudi Arabia for three years until they were given refugee status in the United States. Petitioner arrived with his entire family in the United States in July of 1994 when he was ten years old. From that time on, Petitioner has had Legal Permanent Residence and never left the United States. (Petitioner's Exhibit 1 – Green Card, ECF No. 1, PageID.18.) Petitioner's father and seven of his siblings are all United States citizens. His mother is deceased. Petitioner and one of his brothers are the only family members that are not U.S. citizens.

On January 29, 2015, Petitioner was ordered removed from the United States at a hearing before the Immigration Court in Detroit. (Petitioner's Exhibit 6 – Immigration Status Re: Removal, ECF No. 1, PageID.87.) The basis for his removal appears to be Petitioner's convictions in the Wayne County Circuit Court for felony theft in 2002

and a 2009 conviction in the Wayne County Circuit Court of first-degree home invasion, assault with intent to do great bodily harm less than murder, felonious assault, and felony-firearm.<sup>1</sup>

On September 6, 2023, the Michigan State Parole Board granted early release to Petitioner after they determined that he was rehabilitated, showed no violent tendencies, and was not a danger to the community.

Upon his release from state prison, ICE placed an immigration hold on Petitioner. Petitioner has been incarcerated on this hold in the St. Clair County Jail since September 6, 2023. If released, Petitioner would reside with his father or his fiancée in Michigan. Petitioner also has jobs available for him to start immediately upon his release.

He has resided in the United States since he was ten years old. His father and seven of his eight siblings live in or near Dearborn Heights, Michigan. Petitioner has two U.S. born children who are teenagers who live with their mother, Petitioner's ex-wife, in Warren, Michigan.

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<sup>1</sup> Petitioner sought habeas relief on this latter conviction in this Court before Judge Paul D. Borman, who denied the petition. *Al-Shimary v. Palmer*, No. 2:12-CV-10001, 2013 WL 3148191 (E.D. Mich. June 19, 2013).

On September 27, 2023, ICE served Petitioner a notice of failure to comply pursuant to 8 C.F.R. § 241.4(g) for failing to complete a travel document application. On December 5, 2023, ICE completed a 90-day custody review and determined that Petitioner's detention would continue pending his travel document request. ICE Headquarters requested that the Detroit office submit a travel document request for Petitioner on February 22, 2024. ICE continued Petitioner's detention pending adjudication of his travel document request on June 3, 2024. (Respondent's Exhibit 1, ECF No. 5-1, PageID.197). Respondent, in their reply, attached a "one way laissez passer," a travel document issued by the Ministry of the Foreign Affairs of the Republic of Iraq, which was issued on June 12, 2024. (ECF No. 9-1.) Further, Respondent stated that the Petitioner's removal has been scheduled for early August. (ECF No. 9.)

## II. Discussion

Pursuant to the REAL ID Act and under these specific facts, this Court lacks jurisdiction at this time to stay Petitioner's removal. *See Hamama v. Adducci*, 912 F.3d 869, 875–76 (6th Cir. 2018). Accordingly, the motion to vacate the stay is **GRANTED**. (ECF No. 9.) If Petitioner

seeks a stay of his final removal, he must seek relief from the appropriate United States Court of Appeals.

However, since Petitioner's right to a release from detention on a habeas petition depends on whether removal is reasonably foreseeable and the parties dispute whether Petitioner will be removed in the reasonably foreseeable future (in early August), the Court **ORDERS** the Respondent to submit a status report using the utilities function on CM/ECF **on or before August 20, 2024**. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) ("once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.") Respondent shall provide a copy of the report to Petitioner's counsel.

### **III. ORDER**

It is **ORDERED** that the motion to vacate the stay of removal (ECF No. 6) is **GRANTED**. The stay is **VACATED**. Further, Respondent **SHALL** submit a status report **on or before August 20, 2024**.<sup>2</sup>

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<sup>2</sup> Further delay in removal might warrant granting Petitioner bond and/or habeas relief. *See Zadvydas*, 533 U.S. at 689.

**SO ORDERED.**

Dated: July 31, 2024

s/ Jonathan J.C. Grey  
HON. JONATHAN J.C. GREY  
UNITED STATES DISTRICT JUDGE

Certificate of Service

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First-Class U.S. mail addresses disclosed on the Notice of Electronic Filing on July 31, 2024.

s/ S. Osorio  
Sandra Osorio  
Case Manager